

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 74230 / February 6, 2015

ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 3632 / February 6, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-13872

---

In the Matter of  Marlin R. Brinsky, CPA	: ORDER GRANTING APPLICATION FOR : REINSTATEMENT TO APPEAR AND PRACTICE : BEFORE THE COMMISSION AS AN ACCOUNTANT : RESPONSIBLE FOR THE PREPARATION OR : REVIEW OF FINANCIAL STATEMENTS REQUIRED : TO BE FILED WITH THE COMMISSION
--	--

---

On April 28, 2010, Marlin R. Brinsky, CPA (“Brinsky”) was suspended from appearing or practicing before the Commission as an accountant as a result of settled public administrative proceedings instituted by the Commission against Brinsky pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.<sup>1</sup> This order is issued in response to Brinsky’s application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

The Commission found that Brinsky had been permanently enjoined by a United States District Court from future violations of Rule 2-02 of Regulation S-X. In a complaint filed on April 25, 2005, the Commission alleged, among other things, that Brinsky and others participated in a scheme that resulted in Exotics.com (“Exotics.com”) filing materially false and misleading financial statements in its Commission filings, including, among others, an amended current report on Form 8-K filed on September 24, 2001, a quarterly report on Form 10-QSB for the quarter ended September 30, 2001, and an annual report on Form 10-KSB for the fiscal year ended December 31, 2001. The complaint further alleged that Brinsky and other members of the Merdinger, Fruchter, Rosen & Company, P.C. (“MFRC”) audit staff committed acts and/or omissions that caused them to become non-independent during audits of Exotics.com and caused audit reports issued by MFRC, among other things, to falsely state that the audits had been conducted by an independent auditor and in accordance with generally accepted auditing standards (“GAAS”). The complaint also alleged that Brinsky engaged in a number of improper accounting practices that caused Exotics.com’s financial statements to depart from generally accepted accounting principles (“GAAP”).

---

<sup>1</sup> See Accounting and Auditing Enforcement Release No. 3130 dated April 28, 2010. Brinsky was permitted, pursuant to the order, to apply for reinstatement after two years upon making certain showings.

In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Brinsky attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. Brinsky is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, Brinsky's suspension from practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."<sup>2</sup> This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Brinsky, it appears that he has complied with the terms of the April 28, 2010 order suspending him from appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Brinsky, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Marlin R. Brinsky, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Brent J. Fields  
Secretary

---

<sup>2</sup> Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).